

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 34

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHISATO KATO,
TAKAHIRO KOBAYASHI,
and KAZUO KITAO

Appeal No. 1997-3912
Application 08/016,979

ON BRIEF

Before THOMAS, MARTIN, and LALL, Administrative Patent Judges.
THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 39 through 42. As of the decision date of this appeal, the examiner has indicated the allowability of claims 1 through 29, 31 through 38 and 45 through 52, appellants having canceled claims 30, 43 and 44.

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Representative claim 42 is reproduced below:

42. A method of processing a plurality of workpieces by a working system including a working machine for successively processing the workpieces, machine control means for determining a working condition of said working machine on the basis of an extraneous signal, and controlling said working machine according to the determined working condition, and a measuring device for measuring actual dimensions of working portions of the workpieces processed by said working machine, said method comprising the steps of:

determining as said extraneous signal a compensating value for adjusting said working condition of said machine for the workpieces to be processed subsequently by said machine, on the basis of the actual dimensions of the working portion of the workpieces which have been measured by said measuring device, and according to a compensation rule which changes with a change in a dynamic variation amount of measured values of said actual dimensions successively obtained by said measuring devices, and

according to a compensation rule which changes with a change in a variation amount of measured values of said actual dimensions successively obtained by said measuring device; and

applying said compensating value to said machine control means.

The following reference is relied upon by the examiner:

Moyer et al. (Moyer)	4,719,586	Jan. 12,
1988		

Claims 39 through 42 stand rejected under 35 U.S.C.

§ 102(b) as being anticipated by Moyer. This was a new ground

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of rejection set forth in the initial examiner's answer.

Rather than repeat the positions of the appellants and the examiner, reference is made to the briefs and the answers for the respective details thereof. These include the initial examiner's answer dated April 1, 1996 and the supplemental answer of September 25, 1996. We have also considered appellants' principal brief on appeal filed on November 28, 1995 and appellants' reply brief of May 31, 1996 reflecting the last entered amendments to the claims on appeal. The supplemental reply brief filed on November 25, 1996 has not been considered by us since the examiner's communication, Paper No. 29, mailed on February 6, 1997, indicates that it has not been entered. There, the examiner indicated appellants' "substantial amendments to the claimed limitations add new issues to the case."

OPINION

We sustain the rejection of claims 39 through 42 on the basis of the reasoning expressed by the examiner in principal answer, as well as the embellishments in the supplemental answer. It is noted that the version of these claims on

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appeal is that set forth with respect to the claims attached to the initial reply brief of May 31, 1996.

Pages 3 and 4 of the supplemental answer take the position that the newly added limitations of claims 39 through 42 as presented in the first reply brief are taught in Moyer. We agree. Because the supplemental reply brief of November 25, 1996 has not been entered by the examiner, we have not considered any arguments presented therein. It is further noted, however, that the supplemental reply brief presented in an untimely manner substantial new amendments to the claims on appeal which have obviously not been entered as reflected by the examiner's statement in the communication on February 6, 1997. On the basis on this view of the examiner, the appellants appear to have impliedly admitted the propriety of the examiner's rejection because of the stated substantial amendments to the claims on appeal in the supplemental reply brief.

In view of the foregoing, the decision of the examiner rejecting claims 39 through 42 under 35 U.S.C. § 102 as being anticipated by Moyer is affirmed.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 C.F.R.
§ 1.136(a).

AFFIRMED

	JAMES D. THOMAS)	
	Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
	JOHN C. MARTIN)	
APPEALS	Administrative Patent Judge)	AND
)	
INTERFERENCES)	
)	
)	
	PARSHOTAM S. LALL)	
	Administrative Patent Judge)	

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